IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.11.2006

CORM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
and
THE HON'BLE MR. JUSTICE S. TAMILVANAN

Writ Appeal No.1350 of 2006
and MP.No.1 of 2006

..

M/s. Rainbow Traders
S.F.No.345, Thondi Thottam
V.K. Govt. High School Backside
Angeripalayam
Tirupur. .. Appellant

Vs.

The Commercial Tax Officer
Tirupur (Rural)
Tirupur. .. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 22.09.2006 passed by His Lordship the Hon'ble Mr. Justice K. Chandru in Writ Petition No.34854 of 2006. Presented under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records of the respondent in TNGST 2381561/2003 - 04 and quash the order dated 20.6.2006 passed therein.

For appellant : Ms. G.L. Ramani

For respondent : Mr. Haja Nazirudeen
Spl. Govt., Pleader (Tax)

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM,J.)

The above writ appeal is directed against the order of the learned single Judge dated 22.09.2006 made in W.P.No.34854 of 2006.

2. On direction, learned Special Government Pleader (Tax) takes notice for the respondent.

3. Heard the learned counsel for the appellant as well as the respondent.

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4. The learned single Judge, after finding that there is a provision for appeal against the impugned order of the Commercial Tax Officer, Tiruppur, dismissed the writ petition with a direction to file an appeal.

5. The learned counsel appearing for the appellant points out that inasmuch as pre-assessment notice is mandatory as per Section 12 of Tamil Nadu General Sales Tax Act and though the said notice was issued and served on the appellant/assessee only on 23.06.2006, the assessment order was passed on 20.06.2006, hence according to the learned counsel, the petitioner/appellant, was deprived of making effective representation.

6.On verification, the learned Special Government Pleader appearing for the respondent fairly accepted that pre-assessment notice was served on the appellant only on 23.06.2006, whereas the assessment order was passed on 20.06.2006. In view of the above admitted factual position, we are of the view that the impugned order of the original authority, viz., Commercial Tax Officer, Tiruppur, cannot be sustained on the ground of violation of principles of natural justice and in view of Section 12 of TNGST Act, we set aside the said order. In view of the same, the petitioner / appellant is permitted to submit their objection / explanation if any withihn a period of two weeks from the date of receipt of a copy of this order and thereafter, the authority is permitted to pass fresh order in accordance with law.

The writ appeal is allowed to the extent mentioned above. No costs. Cosnequently, connected MP., is closed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The Commercial Tax Officer
Tirupur (Rural)
Tirupur.

+ 1 cc to Mr. K. J. Chandran, Advocate SR No. 54719

+ 1 cc to the Spl Government Pleader (T) SR No. 54499

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